IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14363 of 2005
Date of decision:

Subhash Wadhawan ...Petitioner

Versus

United India Insurance Co. Ltd. And others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE S. N. AGGARWAL

Present: Mr. H.C. Arora, Advocate,
for the petitioner.

Mr. D.R. Bansal, Advocate, for
the respondents.

K.S.GAREWAL, J.

Subhash Chander Wadhawan joined United India Insurance Company as Development Officer Grade-II on probation. He was confirmed as Development Officer Grade I on March 1, 1987. In 1998, Wadhawan was posted as Development Officer (Administration) at the Divisional Office, Hisar.

On November 7, 1998 Wadhawan was involved in an attempt to forcibly occupy some shops. The main culprits were Prabhu Dayal of

Kamla Nagar, Hisar, his two sons Surjit and Harjinder. There were some others also involved. Surjit was Wadhawan's brother-in-law. During the occurrence Inderjit Kaur and her cousin brother Jaspal Singh had been attacked by Prabhu Dayal and others, including by Wadhawan, with hockey sticks.

The background of the dispute was that after Inderjit Kaur's father Ishwar Singh died, his brother Prabhu Dayal had tried to take forcible possession of Ishwar Singh's property situated at Auto Market, Hisar. A theft case had been registered against them. Proceedings under Section 145 Cr.P.C. were also pending between the parties. The occurrence in which Inderjit Kaur and Jaspal Singh were inflicted injuries had taken place near the shops in dispute, which were locked at that time.

The matter was reported to the police. FIR 662 dated November 7, 1998 was registered at Police Station City Hisar under Sections 148, 149, 323, 325, 506, 427 IPC. After investigation, Prabhu Dayal and others, including Subhash Wadhawan, were sent up for trial. At the trial Subhash (Wadhawan) and others were found guilty under Sections 148, 323, 325, 506 IPC and were convicted by the learned Judicial Magistrate Ist Class, Hisar on June 14. 2003. Subhash Wadhawan was sentenced to rigorous imprisonment for one year each under Section 148, 325 and 506 IPC respectively and to pay fine of Rs. 500/- on each count and lastly, he was also sentenced to rigorous imprisonment for six months under Section 323 IPC and to pay fine of Rs. 500/-. The learned Magistrate directed all the sentences to run concurrently.

Appeals were filed by the convicted persons, which were decided by the learned Additional Sessions Judge, Hisar, on February 28,

2005. The convictions were upheld but sentences awarded to the appellants were set aside and they were released on probation on furnishing personal bonds in the sum of Rs. 10,000/- each with one surety in the like amount to keep the peace and to be of good behaviour.

From the above, it becomes clear that Subhash Wadhawan had been found guilty for assaulting Inderjit Kaur and Jaspal Singh with a hockey stick, due to a dispute over a shop owned by Inderjit Kaur's late father. The shop was being claimed by Inderjit Kaur's uncle Prabhu Dayal whose son Surjit was Subhash Wadhawan's brother-in-law.

Wadhawan's conviction led to his removal from service on September 1, 2003 vide order passed by the competent disciplinary authority of the United India Insurance Company. Copy of the order is Annexure P/3. Wadhawan filed an appeal which was dismissed by the appellate authority on June 7, 2004.

After the learned Additional Sessions Judge had released Wadhawan on probation on February 28, 2005, Wadhawan approached the Regional Manager of his company for revision of the penalty and for reinstatement in service through a revision application filed on March 14, 2005. The Chairman-cum-Managing Director of the Company observed that since Wadhawan had been removed from service on September 1, 2003, much before before his release on probation, his claim for reinstatement was untenable as he stood convicted. Consequently, the revision application was also rejected on July 7, 2005.

The present writ petition was filed to challenge the order of the disciplinary authority dated September 1, 2003 (Annexure P/3), order of the appellate authority dated June 7, 2004 (Annexure P/5) and the order of

the Chairman-cum-Managing Director dated July 7, 2005 (Annexure P/9).

According to the learned counsel for the petitioners, Rule 30 of the General Insurance (Conduct, Disciplinary & Appeal) Rules, 1975 (hereinafter referred to as **the Rules**), provides that the competent authority could impose any of the penalties specified in Rule 23 of the Rules, if an employee was convicted of a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial. The penalties provided under Rule 23 were minor penalties of censure, withholding of one or more increments and recovery from pay. The major penalties were of permanently withholding of one or more i ncrement, reduction in rank, compulsory retirement, removal from service and dismissal. It was argued that many penalties could be imposed and some were minor penalties. The respondents did not consider the matter judiciously which led to the imposition of the major penalty of removal from service. No show cause notice was issued to the petitioner before this penalty was imposed. The petitioner's removal from service was grossly disproportionate to his act/conduct and unduly harsh since he had put in unblemished service of 18 years.

On behalf of the respondents, it was argued that the petitioner never informed the Company about the registration of FIR or about his arrest, consequent trial and conviction. The Company came to know about the petitioner's conviction when a copy of the judgment was received. The matter was gone into and the impugned order was passed under Rule 30 of the Rules. The petitioner was not entitled to any hearing before imposition of the penalty as he had been proceeded against solely on the basis of his conviction, which was an established fact.

The learned counsel for the petitioner advanced two-fold arguments. Firstly, that the respondents had not taken into account the conviction of the petitioner or the nature of the criminal act which led to his conviction, while imposing the penalty. Secondly, that the petitioner having been released on probation would be entitled to benefit of Section 12 of the Probation Offenders Act 1958 which clearly stipulated that a person who is found guilty of an offence and has been dealt with under the provisions of Sections 3 or 4 of the Act, shall not suffer disqualification, if any, attached to the conviction.

In support of the first argument that the nature of the petitioner's conviction had not been considered, reliance was placed on **Mangal Singh** Versus **PUNSUP, Chandigarh and others CWP 3569 of 2004** decided on February 27, 2006 and **Hans Raj** Versus **State of Punjab and others** 2001 (4) RSJ 661. As a secondary argument, it was also submitted that the petitioner had been punished unheard as he was not given a show cause notice before removal from service. In support of this argument the learned counsel relied upon **State of Punjab** Versus **Harbans Singh** 1996 (2) S.C.T. 89. It was also argued that the conviction of the petitioner did not involve moral turpitude and reliance was placed on **Shish Pal Singh** Versus **The State of Haryana and others** 1991 (1) RSJ 748.

Learned counsel for the respondents defended the petitioner's removal from service and urged on the basis of **Trikha Ram** v. **V.K. Seth and another** AIR 1988 Supreme Court 285, that a prior opportunity of hearing by the disciplinary authority, before imposing penalty, was not necessary where the order was passed on the basis of conviction for a criminal offence. Reliance was placed on **Additional D.I.G. of Police,**

Hyderabad Versus **P.R.K.Mohan** (1997) 11 Supreme Court Cases 571, in which the Supreme Court held that Section 12 of the Probation of Offenders Act 1958 was not a bar to a departmental inquiry. Similar was the view in **Hari Chand** Versus **Director of School Education** (1998) 2 Supreme Court Cases 383.

The position which emerges in the present case is that the petitioner was found guilty of having inflicted a grievous injury with a hockey stick. From the judgment of the trial court, Annexure P/1, it is apparent that Inderjit Kaur had the following injuries:-

1. Diffused swelling (reddish) back of left writ joint. Moment of joint were restricted and painful.
2. Reddish contusion over middle of left upper arm 10 x 4 cm insized tenderness was present.
3. Diffused swelling over left scapular region of back tenderness was present.

Jaspal Singh had the following injuries.

1. There was swelling over left fronto temporal region of scalp, tenderness was present.
2. Reddish contusion over left scapular region of size 10 x 3 cm.
3. Reddish contusion lying 3 cm below injury no.2 size 18 cm x 4 cm lying horizontally.
4. Reddish contusion over right side of chest just below right scapular region.
5. Red abraded contusion over left side of back of chest in middle of it size 5 cm x 3 cm.

6. Reddish contusion over upper boarder of left buttock size 14 x 3 cm. Tenderness was present.

7. There was complaint of pain over lower jaw, on right side. The lower first molar (tooth) was mobile and tender and the right lower lateral insizer tooth was missing. He advised orthopedic, general and dental Surgeon opinion and various x-rays.

Injury 1 on the left upper arm of Inderjit Kaur revealed fracture of the left ulna while injury 7 on Jaspal Singh had led to his lower tooth becoming mobile and tender and the right lower lateral incisor was missing.

There had been in all seven accused but it was unclear who had inflicted these grievous injuries. The petitioner was only one of the four convicted persons who had been convicted under Section 325 IPC. The exact nature of the criminal act of the petitioner is not clear from the judgment but this much is certain that the petitioner and his co-accused had tried to take forcible possession of property and had attacked a woman with hockey sticks leading to fracture of her arm. It was this conduct of the petitioner which should have been considered by the disciplinary authority de hors his conviction and subsequent sentence which was suspended on appeal when he was released on probation. There was nothing on the record to show that this conduct had ever been considered before the petitioner was removed from service.

There is another way of looking at this case. The respondent company is entitled to inflict different penalties upon a convicted employee. The penalties range from censure to dismissal. If the employee had been convicted for rape and murder, he would probably deserve to be dismissed

but if he was convicted of a lesser offence, he would certainly be entitled to lesser penalty. How is the penalty to be determined ? We feel that it is not conviction which should be the guiding factor but the employee's actual conduct. The authorities must take into account what the criminal act was, for which the employee was convicted. This would assist in inflicting appropriate penalty on the convicted employee.

This Court in Mangal Singh's case (supra) had, placing reliance on Full Bench of this Court in **Om Parkash v. The Director Postal Services) (Posts and Telegraphs Deptt) and ors** AIR 1973 (P&H) 1, held as under:-

> "...an order of dismissal from service simply because of conviction on a criminal charge without reference to the conduct of the petitioner which led to his conviction cannot be sustained. A perusal of the impugned orders Annexures P4 and P5 would show that the conduct which led to the conviction of the petitioner has not been taken into consideration while passing the impugned orders and the same have been passed only because of his conviction in the criminal case. "

Furthermore, this was also the principle laid down in **Union of India v. Tulsi Ram Patel** (1985) 3 SCC 398**,** wherein it was held as under:-

> "Where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the criminal court and consider

> all the facts and circumstances of the case. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the government servant concerned by reason of the exclusionary effect of the second proviso. However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant concerned and, therefore, it is not mandatory to impose any of these major penalties."

Therefore, we conclude that it is the conduct of the employee which leads to his conviction that is relevant. In the present case, Wadhawan was armed with a hockey stick, which he swung out at Inderjit Kaur and Jaspal Singh. We can not be certain if it was this blow by him which had inflicted grievous injuries on the two injured since there were three other men involved. Eye witness account was not perused by the authorities and is not before us. Wadhawan's counter story, if any, given under Section 313 Cr.P.C. was also not produced before us. We have culled the facts of the case from the judgments of the trial court and the appellate court. As a matter of fact, the appellate court had affirmed conviction but suspended sentence and released Wadhawan on probation. However, we are not considering the effect of Section 12 of the Probation of Offenders Act because the Supreme Court had held in **Additional D.I.G. of Police, Hyderabad's** case (supra) that Section 12 was not a bar to a

departmental inquiry. Nevertheless, failure to examine the petitioner's conduct would vitiate the impugned orders passed by the authorities.

For the foregoing reasons, this petition is allowed and the impugned order of the disciplinary authority dated September 1, 2003 (Annexure P/3), order of the appellate authority dated June 7, 2004 (Annexure P/5) and the order of the Chairman-cum-Managing Director dated July 7, 2005 (Annexure P/9) are hereby quashed. The respondents shall carry out fresh consideration process and examine the conduct of the petitioner which led to his removal from service and thereafter inflict appropriate penalty warranted in the circumstances commensurate with his mis-conduct.

The quashing of the impugned orders shall, however, not entitle the petitioner to any monetary benefit which shall depend on fresh consideration that is to be carried out by the respondents.

(K.S. GAREWAL)
JUDGE

July 18, 2007 **(S.N. AGGARWAL)**
prem **JUDGE**